Statement of Robert Richie
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Thank you for giving me the opportunity to comment on the U.S. electoral system and specifically on the voting process in Ohio.

My name is Robert Richie and I am the Executive Director of FairVote – The Center For Voting and Democracy. FairVote is dedicated to fair elections where every vote counts and all voters are represented. As a catalyst for reform, we conduct research, analysis, education and advocacy to build understanding of and support for more democratic voting systems. We have a Right to Vote Initiative which has developed eight reforms to secure the right to vote that we believe should be pursued at both a state and national level.

In the aftermath of the first presidential election to use provisions outlined in the Help America Vote Act season, it is critical that we examine our electoral process to see what went right and what went wrong so that we may hold better elections in the future. Even though much of the attention Ohio has received in response to the 2004 election has come from its status as a swing-state, Ohio indeed provides a powerful example for much that is wrong with our electoral system in each of the eight areas addressed in our reform proposal.

FairVote has spent the last several months analyzing state-based electoral policies and procedures with the specific goal of determining what are the central components necessary to run a clean and secure election. We have also looked at how states have instituted reforms mandated by the Help America Vote Act.

While there have been some clear improvements from the 2000 presidential election, namely increased turnout and better voter education preventing some of the worst problems of the Florida debacle in 2000, many of the same irregularities, inequities and improprieties that plagued the 2000 presidential election returned in 2004.

Instead of a single set of clear national standards governing our electoral system, voting is administered by a hodgepodge collection of state, county and local bodies setting different and at time conflicting electoral policies. The resulting lack of federal accountability to ensure elections are well-funded and lack of local and state accountability to correct problems have real consequences Around the country in 2004, voting machines malfunctioned and in some cases did not work at all; one of the more severe examples occurred in Carteret County, North Carolina, where more than 4400 votes were lost after a voting machine malfunctioned. Voters suffered harassment and intimidation at the polls and many were wrongly turned away without casting a ballot, and some were incorrectly purged from the voter rolls. While such intimidation continues to be targeted at traditional racial minorities - African American, Latino and Asians. In 2004, college-age and Native-American voters as well were often targets of voting intimidation and harassment. Moreover, improperly trained and underpaid poll workers gave inadequate or incorrect information to voters. Overwhelmed with new voter registration, election officials often produced incomplete voter rolls – and nearly a third of our adult population remains unregistered.

To address these shortcomings and improve upon the Help America Vote Act, FairVote – The Center for Voting and Democracy has launched its Right to Vote Initiative. We

believe our series of commonsense reforms should be adopted to protect the right of all U.S. citizens to vote.

Here are our eight reforms and how each reform if adopted would uniquely benefit Ohio and the rest of the country:

1. Uniform Standards and Real Accountability
2. Universal Voter Registration
3. Early Voting/Election Day as a Holiday
4. Fair Provisional Ballot and Voter ID Laws
5. Public Interest Voting Machines
6. Universal Ballot Design Standards
7. Nonpartisan Election Administration
8. A Constitutional Right to Vote

Uniform Standards and Real Accountability - While many Americans believe that there are national policies regarding election administration, in reality, states and typically counties are not bound by national standards but are instead free to set policies and procedures such ballot design, poll worker training and absentee ballots on their own. Without clear standards there is no accountability and without accountability voters cannot be expected to have faith in the accuracy of results. In close elections like the 2004 gubernatorial race in Washington, lack of consistency across a state inevitably puts courts in the position of making politically-charged decisions. If 2000 taught us anything, it is that we don't want courts to be in that position; yet because Washington state has unclear standards and uneven interpretations of issues like when to reject absentee ballots, its Supreme Court is now in exactly the same position as the U.S. Supreme Court was in the Bush v. Gore case in 2000.

In Ohio, voting is anything but standardized. Instead of a single type of voting equipment on which all voters cast ballots, Ohioans use any of three type of voting machines: punchcard, optical or electronic. In fact 70% of Ohioan voter used the much-reviled punchcard system used by many Floridians four years ago.

To some it may be unfeasible for all voters in a state to vote on a single type of voting machine. We believe that need not be the case with sufficient commitment to the right to vote, but the larger issue at stake is that voting equipment is not uniformly accurate. In other words some equipment consistently has a higher error rate than other voting equipment. Thus voters in one county/precinct may be more likely than voters in a different county to have their vote correctly counted. This is unacceptable. To ensure the integrity of elections, voters must have an equal opportunity to cast a vote that will be counted.

Furthermore, the accusation that certain precincts in Ohio did not have enough voting machines to handle the number of voters leading to exceptionally long lines is indicative of the negative effect of a decentralized electoral system. Even if there was no malicious intent on the part of the Ohio Board of Elections when assigning voting machines, the mere appearance of inequality fuels such accusations.

To avoid such accusations in the future, Ohio should adopt uniform voting policies and standards. There should be both pre-election and post-election accountability built into the system. All plans for elections should be submitted for public review far enough away

from the election that public comment can be collected to ensure fair decisions. Every county should provide precinct-level information about the impact of its decision: how many provisional ballots were counted and not counted, how many ballots were rejected as invalid for each office, what share of registered voters participated, what was the longest amount of time a voter had to wait, how many people voted per machine and so on.

To establish uniformity in Ohio and across the country, Congress should set uniform standards for election administration. Such standards would guarantee that states would have to follow clear guidelines that would ensure that each voter has an equal opportunity to cast a vote that will be counted correctly.

Universal Voter Registration – We need clean and complete voter rolls, which is already the international norm. Every citizen turning 18 and every person becoming a citizen should be automatically registered.

The current system is a failure, despite the best intentions and efforts of many local and state officials. On the one hand, barely two out of every three citizens eligible to vote are registered to vote. On the other hand, far too many people are registered in more than one state. The rolls are filled with people who have died or moved; a Chicago Tribune report found that 181,000 dead people were registered in six swing states. Again and again we saw problems in 2004 stemming from the fact that so many people are not registered to vote – problems relating to processing voter registrations, corrupt firms throwing out some voter registrations for partisan reasons, controversies over provisional ballots and so on.

While recognizing the important need to balance the desire for clean and complete voter rolls with individual freedom and privacy, there is still room to develop an automatic registration process that uses some unique identifier to allow all citizens to become registered. We can turn to nearly ever modern democracy in the world to find a means that will be consistent with our traditions of protecting civil liberties.

Voting should be an easy action in which every citizen can partake. However, all too often potential voters face an up-hill battle even to get registered. Interestingly, these 'roadblocks' to registration are rarely needed and more importantly aren't even consistently enforced. Such disparities invite criticism and decrease voter trust in the system.

Consider Ohio. In late September of 2004, Ohio Secretary of State Kenneth Blackwell issued an order that all voter registration applications must be on 80-inch thick paper and that counties would be unable to accept applications that did not adhere to this standard. In response, some counties immediately stopped accepting applications not only 80-inch thick paper. However, other counties ignored the order and still a third set of counties attempting to adhere to the policy actually glued paper to the back of registration forms in a hope to increase their thickness to create the image of compliance. Unfortunately, such county level decisions occur quite frequently leading to confusion and inequality across a state. While Blackwell did eventually rescind this requirement, it is impossible to determine how many citizens failed to register as a result.

Additionally, like Florida, Ohio grappled with whether or not to exclude voters who had forgotten to check off the citizenship box on their voter registration application. The state

ultimately decided to process registrations even if the box had not been checked, but again an untold number of Ohioan residents were potentially disenfranchised.

On the same note, it is imperative that as a nation we develop voting policies that reduce the possibility of voter fraud and double-voting. One California resident submitted over 1000 fraudulent voter registration cards rife with problems, including cartoon-character-type names, wrong addresses or phony addresses. A report from the Ohio *Plain Dealer* found that over 27,000 voters were doubly registered in Ohio and Florida alone. It has yet to be determined how many actually voted twice, but we can all agree that voters should be able to vote once and only once. Clean and complete rolls must be a major goal of electoral reform. The only way to do this is to restructure how voter registration proceeds.

These decisions, which can seemingly be made at random by secretary of state, harm the integrity of the electoral process and all to often lead to improper disenfranchisement.

Had Ohio already utilized a standardized universal automatic voter registration process or at least Election Day voter registration as done in six states, Ohio could have eliminated or at least greatly reduced voter registration hurdles. Without these registration problems, Ohio may have been able to avoid the scrutiny it now faces.

Early Voting/Election Day as a Holiday – Making Election Day a holiday and holding early voting on the weekend would increase the pool of poll workers and increase voter convenience. It would also help significantly reduce the absurdly long lines seen in across the country during the 2004 election.

The big issue during the 2000 election was the hanging chad, this time around it was the long line and we saw 58% percent turnout. Just imagine if we had a 70 or 80 percent turnout like many other nations around the world, voters would be in line overnight. Clearly this would not be acceptable. Moreover, nearly half of our states close their polls by 7:30 pm; two states close them at 6 pm. The result is particularly difficult for blue-collar workers who lack the flexibility to arrive late, take time off during the day or leave early to vote.

The highest voter turnout in the United States typically is not in any of our 50 states. Puerto Rico had the highest voter turnout in 2000, despite not being able to vote for their commander in chief, and was in the top three in 2004. It is no accident that Election Day is a holiday in Puerto Rico. We see great value in promoting a day every two years where we recognize the importance of voting to our civic life and citizens come together for the common good. I

Ohio again provides clear examples of the value of making Election Day a holiday. Voters experienced some of the longest lines of any voter during the election. Voters in Hamilton County, one of its largest counties, waited upwards of six hours and some voters from Kenyan College waited even longer. While many voters did spend the time waiting to vote, it is impossible to determine how many voters left.
As Americans move away from the traditional 9-5 workday and no longer maintain work schedules that are conducive to voting, more and more Americans are finding it harder vote. Comments from voters in states that use early voting are overwhelming positive. Adding early voting would provide more options for citizens that have difficulty getting to the polls and reduce lines at the polls making voting easier.

Fair Provisional Ballot and Voter ID Laws –
As evidenced by the election of 2004, the lack of fair and consistent federal requirements regarding provisional ballots and voter ID laws was particularly vexing. The fight over whether or not provisional ballots would be accepted and counted if cast outside of the voter's correct precinct was bitter and the subject to many lawsuits. Additionally, questions over voter ID requirements faced a similar battle.

After much legal ping-pong Ohio finally decided to count provisional ballots only if they were cast in the correct precinct. Ultimately, with Bush winning Ohio by more than 118,000 votes, it would have been very unlikely for the number the number of provisional ballots cast 155,337 to have affected the outcome of Ohio and subsequently the presidency. Even though most provisional ballots ended up being counted in Ohio, the fact remains that Ohio's decision was inevitably seen as partisan in nature – and did lead to not counting the votes of some registered citizens whose polling place changed.

However, while we were fortunate that the Ohio vote was not close enough for provisional ballots to make a different, if Congress does not set a clear standard for how provisional ballot are counted in the future it is very possible that in four years the vote count of a state may be within a small enough margin where the outcome of a president election will hinge solely upon how provisional ballots are counted. To avoid this, we should have uniform standards regarding how such votes are tallied.

Public Interest Voting Machines –We should use our nation's technical expertise to create voting equipment that supports the needs of people with disabilities and language minorities, that has open-source software and a voter-verified paper audit trail and that can be adapted for all localities' election methods.

Over the last four years, the equipment voters' use has received more attention than other issue related to electoral reform. Many organizations and coalitions have worked to ensure that the voting equipment used on Election Day is of the highest quality and is very secure. Probably none have been as vocal as those arguing for a voter-verified paper trail.

Ohio uses a mixture of punchcard, optical scan and electronic voting machines. As our country becomes every more digitized it is only logical that so to will our voting equipment. With every election more and more people will be voting with optical scans or electronic machines. To this end, FairVote believes that it is essential that the equipment used will guarantee the security and privacy of each vote.

Whether or not the companies that developed the software used in electronic voting machines in Ohio, Florida and many other states wrote into the counting program source code that changes, loses or adds votes, the reality is that a large number of Americans believe this to be the case. This controversy will not go away, and elections will continue to be disputed, until a voting system is developed the recognizes the concerns of these citizens.

As it is, the only choices available to counties are machines developed by private, for-profit companies with proprietary software. These choices simply aren't what they should be for citizens of one of the wealthiest, most technically sophisticated nations in the world. If the United States can develop a spaceship that sends an astronaut to the moon, we should be able to use government resources and our technological knowledge to

develop voting equipment that meets public interest needs and guarantees each vote is correctly counted.

Universal ballot design standards - After the 2000 presidential election and the infamous butterfly ballots, Boards of Election did begin to pay more attention to ballot design. However, even today, there is no guarantee that a butterfly-ballot type fiasco could not occur again. There are no national standards for ballot design and no public review process required

In Ohio approximately 93,000 ballots did not record a vote for president. This amounts to approximately 1.6 percent of the total votes cast. While the percentage is smaller than the rate of discarded ballots in 2000 and these votes would not have changed the outcome even if they were all for the same candidate, that number is still more than three times as high as some jurisdictions and many national elections in other countries. It is essential that we figure out why votes were not recorded for president.

Some Ohioans did not want to vote for president – probably about 0.3% to 0.5%. Some did not use their antiquated voting equipment correctly. But without doubt some residents found the ballot confusing or hard to understand. It is essential that we look for ways to reduce this confusion.

One improvement would be to establish a national ballot access law for the presidential election. As it is, candidates can appear on as few as one state or the District of Columbia. No statewide election would allow counties to make their own decisions about ballot access for that election; similarly, we should set reasonable standards that would lead to candidates either being on all presidential ballots or on none.

From there it would be easier to develop a universal ballot design for president or at least clear standards that every state must follow so that ballots are well designed. We also need higher standards and more public input, consistency and accountability in ballot design to avoid past ballot design mistakes. Finally, voter education would be easier with a national ballot access law for presidential candidates.

Non-partisan election administration -

In 2000 Katherine Harris, Florida's Secretary of State came under fire for being both a governmental official and the Chair of the Bush/Cheney campaign in Florida. Similarly, in 2004, Kenneth Blackwell, the Secretary of State of Ohio was accused of partisanship because he too positioned in himself in the duel role of Bush/Cheney Ohio co-chair and in his role as chief elections commissioner of the state. He also is a leading contender for governor in 2006 and in need of winning allies in gaining the Republican nomination. The fact that Ohio and Florida have been the subject of intense scrutiny and allegations of impropriety should be of no surprise.

Whether Blackwell or Harris made partisan decisions is open to dispute, although it's not easy to find examples of where they sided against the perceived interests of their party. But there is no dispute that they were in a no-win situation where any decision would be seen as being done for partisan reasons. The scrutiny that they have endured, as well as the public's loss of faith in the voting process warrants a reexamination of the role of a partisan secretary of state in the electoral process and partisanship throughout the process. It is important to note that Secretary's of states are not always in charge of elections. In

fact, the Illinois Board of Elections is a bi-partisan independent state agency with the ability to set electoral policies and procedures.

To guarantee the integrity of voting process, partisan officials should not make decision about voting administration. While change in election administration oversight may not eliminate electoral problems, reducing the perception of partisanship in elections will have the effect of easing the fear voters have that an election could be stolen.

A Constitutional Right to Vote: Individual reforms as discussed above are critical if we are to develop an electoral system that guarantees each citizen the ability to vote and have that vote accurately counted. However, at the heart of many of the electoral issued previously discussed is the fact that there is no right to vote in the U.S. Constitution.

The Constitution does protect against discrimination based on race, sex and age, but it does not provide citizens an affirmative right to vote. Instead, each state sets voting policies and procedures such as ballot design, registration requirements. As evidenced from above too often these state based policies lead to improper disenfranchisement lost votes and a broken democracy.

We support the addition of a right to vote amendment to the U.S. Constitution. Such an amendment would make voting a right of citizenship that all Americans can equally enjoy. It would further mandate that Congress must set minimum voting standards that all states must follow and ensure that each vote cast will be accurately counted.

Finally, these eight reforms are urgently necessary if we are to improve the quality of elections, strengthen our democracy and secure our most basic citizenship right: the right to vote. Thank you for giving me the opportunity to comment on the state of our electoral system